No. 514.

Brf. of Lindsay for Appellant

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Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 514.

CHRISTIAN HUUS, APPELLANT,

vs.

NEW YORK AND PORTO RICO STEAMSHIP COMPANY, APPELLEE.

BRIEF FOR APPELLANT.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 514.

CHRISTIAN HUUS, LIBELLANT, APPELLANT,

vs.

NEW YORK AND PORTO RICO STEAMSHIP COMPANY, RESPONDENT, APPELLEE.

BRIEF FOR LIBELLANT, APPELLANT.

This case comes to this court on certificate by the judges of the United States circuit court of appeals for the second district. The action was brought by the libellant to recover spoken pilotage, the master of the vessel having declined to take a pilot and having personally brought his vessel into the harbor of New York.

The vessel was a steamship bound inward from San Juan, in the island of Porto Rico.

The case was submitted to the district court on an agreed

statement of facts. It was contended on the part of the libellant that the vessel in question was subject to pilotage charges under the statutes of the State of New York, while the respondent claimed exemption therefrom on the ground that Porto Rican ports had ceased to be foreign ports, and that by an act of Congress of April 12, 1900, the trade between Porto Rican ports and ports of the United States has been made *coastwise* trade, and that in consequence thereof said vessel was expressly exempt from pilotage charges under the statutes of the State of New York.

The questions submitted to this court are:

"1. Since the proclamation of the treaty of peace between the United States and the Kingdom of Spain and the passage of the act of Congress, entitled 'An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes' (approved April 12, 1900), do Porto Rican ports remain foreign ports in the sense in which those words are used in the statutes of the State of New York regulating pilotage?"

"2. Are vessels engaged in trade between Porto Rican ports and ports of the United States engaged in the coasting trade in the sense in which those words are used in the statutes of the State of New York regulating pilotage?"

"3. Are steam vessels engaged in trade between Porto Rican ports and ports of the United States coastwise steam vessels in the sense in which those words are used in section 4444 of the Revised Statutes of the United States?"

United States Statutes Affecting the Questions at Issue.

U. S. R. S., sec. 4235: "Until further provision is made by Congress all pilots in the bays, inlets, rivers, harbors and ports of the United States shall continue to be regulated in conformity with the existing laws of the States respectively wherein such pilots may be, or with such laws as the States may respectively hereafter enact for the purpose."

U. S. R. S., sec. 4401: "All coastwise sea-going vessels, and vessels navigating the Great lakes, shall be subject to the navigation laws of the United States, when navigating within the jurisdiction thereof; and all vessels propelled in whole or in part by steam, and navigating as aforesaid, shall be subject to all the rules and regulations established in pursuance of law for the government of steam vessels in passing, as provided by this title; and every coastwise sea-going steam vessel subject to the navigation laws of the United States, and to the rules and regulations aforesaid, not sailing under register, shall, when under way, except on the high seas, be under the control and direction of pilots licensed by the inspectors of steamboats."

U. S. R. S., sec. 4444: "No State or municipal government shall impose upon pilots of steam vessels any obligation to procure a State or other license in addition to that issued by the United States, or any other regulation which will impede such pilots in the performance of the duties required by this title; nor shall any pilot charges be levied by any such authority upon any steamer piloted as provided by this title; and in no case shall the fees charged for the pilotage of any steam vessel exceed the customary or legally established rates in the State where the same is performed. Nothing in this title shall be construed to annul or affect any regulation established by the laws of any State, requiring vessels entering or leaving a port in any such State, *other*

than coastwise steam vessels, to take a pilot duly licensed or authorized by the laws of such State, or of a State situate upon the waters of such State."

Extracts from the Statutes of the State of New York Regulating Pilotage so Far as the Same Affect the Actions Herein.

Section 2119 of the New York consolidation act provides as follows:

"*No master of any vessel navigated under a coasting license and employed in the coasting trade by the way of Sandy Hook shall be required to employ licensed pilot when entering or departing from the harbor of New York*, but this provision shall not be construed to alter the legal rate of compensation of any pilot who may be so employed; but in case the service of a pilot shall have been given, the pilot shall be entitled to the rates established by this title. If the master of any vessel above one hundred and fifty and not exceeding three hundred tons' burden, and owned by a citizen of the United States and sailing under a coasting license to or from the port of New York, by the way of Sandy Hook, shall be desirous of piloting his own vessel, he shall first obtain a license for such purpose from the commissioners of pilots, who are hereby authorized and required to grant the same, if such master shall, after an examination had by said commissioners, be deemed competent; which said license shall be and continue in force one year from the date thereof, or until the termination of any voyage during which the license may expire. For such license the master to whom it shall be granted shall pay to the said commissioners four cents per ton. *All masters of foreign vessels and vessels from a foreign port*, and all vessels sailing under register, bound to or from the port of New York by the way of Sandy Hook *shall take a licensed pilot*; or, *in case of refusal to take such pilot, shall himself*,

owners, or consignees, pay the said pilotage as if one had been employed, and such pilotage shall be paid to the pilot first speaking or offering his services as pilot to such vessel. Any person not holding a license as pilot under this title, or under the laws of the State of New Jersey, who shall pilot or offer to pilot any ship or vessel to or from the port of New York by the way of Sandy Hook, except such as are exempt by virtue of this title, or any master or person on board a steamtug or towboat who shall tow such vessel or vessels, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding one hundred dollars, or imprisonment not exceeding sixty days; and all persons employing a person to act as pilot, not holding a license under this title or under the laws of the State of New Jersey, shall forfeit and pay to the board of commissioners of pilots the sum of one hundred dollars. *This section shall not apply to vessels propelled wholly or in part by steam, owned or belonging to citizens of the United States, and licensed and engaged in the coasting trade.*"

An Act Temporarily to Provide Revenues and a Civil Government for Porto Rico, and for Other Purposes.

Approved April 12th, 1900.

"SEC. 9. That the commissioners of navigation shall make such regulations, subject to the approval of the Secretary of the Treasury, as he may deem expedient for the nationalization of all vessels *owned by the inhabitants of Porto Rico* on the eleventh day of April, eighteen hundred and ninety-nine, and which continued to be so owned up to the date of such nationalization, and for the admission of the same to all the benefits of the coasting trade of the United States; *and the coasting trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States.*"

POINTS AND ARGUMENT.

The presumption is against the claim of Federal interference with the subject of port pilotage.

(*a.*) It has been the policy of the United States Government during the course of more than one hundred years to allow the various States to regulate the subject of pilotage within their respective jurisdiction. Few statutes affecting the subject have been passed by Congress since the adoption of the Constitution, and such as have been enacted have been chiefly for the purpose of preventing unfair discrimination. Congress has repeatedly declined to pass any general bill regulating the subject of port pilotage, and the very Congress by which the Porto Rican bill of April last was enacted declined to pass a bill known as "House Bill No. 5462," entitled a "Bill regulating pilotage," by which it was sought to confine the control of port pilotage to the United States inspectors. The contention, therefore, that the United States Government has interfered with the subject of port pilotage must be clearly substantiated. The presumption is opposed to such claim, and only by explicit language, apt for the purpose, can the laws of the States or the earlier laws of Congress upon the subject be modified.

(*b.*) Moreover, the State laws in regard to pilotage are to be liberally and beneficially construed for the benefit of pilots (4 Daly, 325), as the claim for pilotage is not a penalty imposed by the State, but a compensation upon an implied contract (13 Wallace, 236); not a charge upon the vessels,

but rather a regulation instituted for their benefit (Dr. Lushington in the "Hanna," 3 L. R., 1 A. & E., at page 290).

Porto Rican Ports are Foreign Ports.

"The United States of America" constitute a political and geographical entity embracing the States of the Union and the contiguous American territory to which the Constitution has been made applicable, whether by that instrument itself, or by treaty, or by congressional enactment, or by both. In the general sense the sovereignty of the Government of the United States rests in and with the people of the several States, acting in part through their State organizations, and in part through their direct intervention in the election of members of the House of Representatives of the Federal Congress. In the exercise of their sovereign powers, the people of the States are restrained by the limitations and restrictions of the Federal Constitution and confined to the powers delegated to the General Government in express terms, or by reasonable implication, when their sovereignty is called into action in regard to the States, or to the people of the States, or to the Territories to which the Constitution has been extended, or to the people of those Territories.

As regards territory to which the Constitution has not been extended or applied the sovereign power of the United States, and of the people of the States, is as unlimited and unrestrained as the sovereign power of any other nation.

The people of the political and geographical entity denominated the United States are not restrained from exercising sovereignty over a foreign country and at the same time permitting it to remain foreign in the sense in which

the term "foreign" is frequently used and used with the greatest propriety.

Conquered territory is subject to the sovereign authority and dominion of the United States, but it is not part of the United States, nor does it cease to be a foreign country or its inhabitants cease to be alien in the sense in which those words are used in the laws of the United States.

Other nations are bound to regard the conquered country while held by the United States as part of its territory, but the conquered country forms no part of the Union, and, forming no part thereof, is foreign to the constitutional boundaries of the United States and to the States and Territories included within such boundaries.

Fleming *vs.* Page, 9th Howard, 615, 616.

Halleck on International Law.

At the time the Treaty of Paris was negotiated the United States held Porto Rico as a conquered country. Our dominion extended over its people, and we had the right to enforce such laws as we saw proper to decree, but the country itself remained foreign to the United States and its people remained aliens, and trade between the ports of Porto Rico and the port of New York was trade between American and foreign ports. The treaty ratified and perpetuated the title we had conquered, but it did not provide for the incorporation of the island of Porto Rico into the territory of the United States; it did not provide that the people of Porto Rico should cease to be aliens to the Government of the United States. The treaty assumed that they were not made citizens of the United States by its provisions, and committed their civil and political status to the discretion of the Congress of the United States.

Before the date of the treaty, and at the time of its ratification, the civil and political status of the Porto Ricans was controlled and determined by the President of the United States as Commander-in-chief of our Army, they being then in the strictest sense conquered aliens. After the treaty they were to remain in like condition, except that Congress was to assume the duties and exercise the powers theretofore resting on and in the President.

Congress did not understand that the treaty introduced Porto Rico into the United States or converted its people from their character of aliens into citizens of the United States.

The latter clause of section 9 of the act of April 12, 1900, on which the defendants rest their entire defense, describes trade between San Juan and New York, or between Porto Rico and any American port, "as the coasting trade "*between* Porto Rico and the United States." No act of Congress ever described trade between New Orleans, or Louisiana, or Florida, or California, or Alaska, and the other ports of the United States, as trade between those countries and the United States.

Trade between the United States and some other country is not domestic trade, whether that other country be subject to the dominion of the United States or to the dominion of some other sovereign power.

Porto Rico was a foreign country and Porto Rican ports foreign ports when the New York statute was enacted; consequently, vessels plying between Porto Rican ports and the port of New York by way of Sandy Hook were included in the provisions of the New York regulations.

That those ports continued foreign until the ratification of

the recent Treaty with Spain is not denied. That treaty does not in terms convert such antecedently foreign into domestic ports.

It employs no language affecting the pre-existing political relations between Porto Rico and New York, and it is plain the treaty-making power did not intend to introduce Porto Rico into the United States as an integral portion thereof.

The treaty in express terms invests Congress with power to determine the civil and political status of the inhabitants of Porto Rico and the Philippines.

Congress so understands the treaty, and in the exercise of its supposed power has determined that the inhabitants of Porto Rico are not to be deemed citizens of the United States, but citizens of Porto Rico. Congress does not recognize Porto Rico as an integral portion of the United States. On the contrary, it treats it as a foreign country.

The provisions of sections 2 and 3 of the act of April 12, 1900, are conclusive of this proposition. The language: "On and after the passage of this act all merchandise coming into the United States from Porto Rico and coming into Porto Rico from the United States shall be entered," &c., for the payment of duties, is consistent with the foreign character of the island, but utterly inconsistent with the claim here made that it is an integral part of the territorial entity known as the United States.

On the assumption that the intention of the treaty-making power was that Porto Rico should remain a foreign dependency until Congress should consolidate it with the United States, then the ports of that island remain foreign ports, so far as the State of New York and her ports are concerned.

To this contention it is answered that the Constitution *ex*

proprio vigore extended to and embraced in its protecting folds the people of Porto Rico immediately upon the acceptance of the act of cession, and that so much of the treaty as commits the civil and political status of the Porto Ricans to the determination of Congress is ultra-constitutional and void.

If this assumption be correct, then we have a treaty to which neither Spain nor the treaty-making power of the United States gave consent.

The *aggregatio mentium* applies as well to treaties as to other contracts, and as well to nations as to individuals.

Spain was not willing to entrust the interests of Spanish residents or those of the descendants of Spaniards in Porto Rico or in the Philippine islands to the government and control of the native races of those countries, or to a territorial government administered by Congress, subject to the limitations, restrictions, and disabilities imposed by the Constitution of the United States in reference to citizens of the United States.

Trial by jury would in general be farcical in the Philippines. No Spaniard or descendant of a Spaniard and no loyal native could rely for security of liberty or property on the verdict of a Tagalo or half-breed jury. *Habeas corpus* might interfere, and doubtless would interfere, with the punishment of crime and with the repression of lawlessness.

Spain was willing to trust the intelligent discretion of the American Congress in securing protection to the liberty, property, and religious freedom of her late loyal subjects, but not willing so to rely on congressional discretion if it was to be absolutely controlled by the limitations and disabilities imposed on Congress by the Federal Constitution.

Spain may regard, and doubtless does regard, the Constitution as admirable in all its provisions, applied to and by an enlightened and law-abiding people, but as inefficient and impossible when applied by the ignorant half-breeds of Porto Rico or the uncivilized and half-savage races of the Philippine islands; hence the contract, as Spain agreed to it, was that the civil rights and political status of the Porto Rican people should be determined by Congress in the exercise of its reasonable discretion for the common good of the people of the ceded territory and of the United States.

Whether this contract, so far as the United States are concerned, be wise or unwise, whether it accords with or conflicts with the Federal Constitution, the courts cannot relieve against or disregard its terms.

This court, speaking through Justice Story, has said that the courts are not called on to interpret treaties when their language is unambiguous, nor to inquire into the reasons influencing the contracting parties:

"We are to find out the intention of the parties by just "rules of interpretation applied to the subject-matter, and "having found that, our duty is to follow it as far as it goes, "and to stop where that stops, whatever may be the imper- "fections or difficulties which it leaves behind."

This rule follows from the fact previously stated by the court in the same case, that:

"In the first place this court does not possess any treaty- "making power. That power belongs by the Constitution "to another department of the Government, and to alter, "amend or add to any treaty by inserting any clause, whether "small or great, important or trivial, would be on our part

"an usurpation of power and not an exercise of judicial "functions."

The *Amiable Isabella*, 6 Wheaton, 70, 71.

The courts cannot enlarge or extend or abridge the provisions of the late treaty with Spain in regard to the power of Congress to determine the civil and political status of the native inhabitants of the ceded territories so as to make that provision read as though the contracting parties had added the words "in accordance with and pursuant to the Constitution of the United States."

When Spain wished to secure to the subjects over which she was surrendering jurisdiction the rights of American citizenship, she caused the treaty to stipulate in terms for the speedy admission of the inhabitants of the ceded country (Florida) to the enjoyment of the privileges, rights, and immunities of citizens of the United States.

See Treaty of 1819.

It may be true, as a general rule, that treaties made by the United States, like the laws of Congress, are to be so construed, if reasonably possible, as not to conflict with the Constitution. This treaty, however, in express language declares its purposes, and whether its provisions be constitutional or unconstitutional, Spain is under no obligation to regard, and cannot be compelled to submit to, this rule of interpretation. If the treaty-making power of the United States exceeded its constitutional authority in contracting to confide the civil and political status of the Porto Ricans and Filipinos to the determination of Congress, then possibly the contract may be treated as void, in which event the relations between the United States and Porto Rico will remain

as they existed at the time of the ratification of the void treaty.

It will not do for our courts to read into the Treaty of of Paris similar language to that used in the treaties with France in 1803, with Spain in 1819, and with Mexico in 1848. This language was carefully left out of the Treaty of Paris, and to incorporate it into that treaty without the consent of Spain will be to make that government a party to a contract to which it has never consented. It will be to alter, amend, and add to the treaty an important clause which it is clear was purposely and deliberately omitted by the contracting parties.

Upon the assumption that the treaty is void, Porto Rico remains a foreign country, held by the United States merely as a conquered province.

If, however, the treaty be valid in all its provisions, then the United States hold and control Porto Rico as a foreign dependency, to which Congress has not seen proper to extend our Constitution and laws. In either event San Juan remains *a foreign port* in the contemplation of the New York statute.

Constitution Does Not Extend ex Proprio Vigore.

The Constitution does not of its own vitality extend to newly acquired territory, and has never been so construed by Congress, nor was this opinion held by the statesmen of earlier days.

When we treated for the cession of Louisiana, in 1803, Jefferson was President, Madison Secretary of State, and the commissioners to France were Monroe and Livingston. All

four of these statesmen were contemporaries of the men who framed the Constitution, and Madison one of the leading members of the convention by which that instrument was framed.

It did not occur to the French government, or to the American commissioners, or to President Jefferson, or to Mr. Madison, that by the mere acceptance of the formal cession the Constitution and laws of the United States would at once be extended to the newly acquired territory and to the people thereof. The French government required, and the representatives of the American Government acceded to, the express stipulation that the inhabitants of the "ceded territory shall be incorporated into the Union of the United States and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all rights, advantages, and immunities as citizens of the United States."

The modern doctrine of the extension of the Constitution *ex proprio vigore* was evidently then unknown and unacknowledged, otherwise this treaty stipulation would have been superfluous and unnecessary.

In 1819, Mr. Monroe then being President and John Quincy Adams Secretary of State, a similar stipulation was inserted in the treaty by which Spain ceded Florida to the United States.

It was in virtue of this stipulation that the inhabitants of Florida were held by the Supreme Court to have been admitted to the enjoyment of the privileges, rights, and immunities of citizens of the United States.

The treaty with Mexico in 1848 contained a like stipula-

tion in regard to the inhabitants of California and New Mexico.

Commenting on the treaty for the cession of Louisiana, Chief Justice Marshall used this language:

"The first article makes the cession, and the second de-
"scribes its extent as comprehending every right vested in
"France. The third is expressed in these words: 'The
"'inhabitants of the ceded territory shall be incorporated
"'into the Union of the United States and admitted as soon
"'as possible according to the principles of the Federal Con-
"'stitution to the enjoyment of all the rights, advantages
"'and immunities of citizens of the United States, and in
"'the meantime they shall be maintained in the free enjoy-
"'ment of their liberty, property and the religion which
"'they profess.' * * * This article obviously contem-
"plates two objects, one that Louisiana shall be admitted
"into the Union as soon as possible upon an equal footing
"with the other States, and the other that until such ad-
"mission the inhabitants of the ceded territory shall be pro-
"tected in the enjoyment of their liberty, property and re-
"ligion. Had any one of these rights been violated while this
"stipulation continued in force the individual supposing
"himself to be injured might have brought this action into
"this court."

New Orleans *v.* Armas, 9th Peters, 223.

The learned Chief Justice treated each of these stipulations as of first importance and did not intimate that either was unnecessary or superfluous, as would have been the case if the Constitution of its own virility attached to the newly acquired territory and to the people thereof immediately upon the ratification of the treaty.

If this modern doctrine had then been understood to pre

vail, it would have been preposterous to treat for the freedom of religion or for the security of property or liberty in view of the amendments to the Federal Constitution.

It is evident Mr. Jefferson did not suppose that the treaty with France could operate to introduce the Louisiana Territory into the United States, and equally evident he did not believe that Congress possessed constitutional authority to extend the Constitution to the Territory for the cession of which the contract had been negotiated.

Before the ratification of the treaty, but after it had been signed, he prepared and submitted to Mr. Gallatin two drafts for a proposed amendment to the Constitution, each of which substantially provided that the Louisiana Territory should be "*incorporated into the United States and made part thereof*," and the white inhabitants made citizens.

In Soulard *v.* U. S., 4 Peters, 512, Chief Justice Marshall said for the court:

"In the treaty by which Louisiana was acquired the "United States stipulated that the inhabitants of the ceded "territory should be protected in the free enjoyment of their "property. The United States as a just nation regard this "stipulation as the avowal of a principle, which would have "been held equally sacred though it had not been visible in "the contract."

He styled, and properly styled, the stipulation the avowal of a just "*principle*," not the avowal of a constitutional obligation that would have bound the United States independently of just principles.

Not only does this modern contention conflict with the past history of our country, but it arises out of the assumption that the Government of the United States is lacking in

one of the most important and generally exercised attributes of sovereignty.

We hear much concerning the Declaration of Independence and its recognition of the inalienable rights of man, and of the dependence of the legitimate powers of government on the consent of the governed, but the end intended to be accomplished by the Declaration seems not to receive the consideration to which it is manifestly entitled. The signers of the Declaration proclaimed that the American States,

"AS FREE AND INDEPENDENT STATES, HAVE FULL POWER "TO LEVY WAR, CONCLUDE PEACE, CONTRACT ALLIANCES, "ESTABLISH COMMERCE, AND TO DO ALL OTHER ACTS AND "THINGS WHICH INDEPENDENT STATES MAY OF RIGHT DO."

At the time this declaration was made all independent States or nations claimed and exercised the right to acquire, hold, and govern foreign dependencies, and no State or nation then recognized its obligation to confer on the people of such acquired territory the rights, privileges, and immunities enjoyed by the people of the home government, except at its own will and discretion.

If the American States, when acknowledged to be sovereign by the King of Great Britain, rested under an obligation then resting on no other independent State, their success, great as it was, did not secure to them the full right to do "*all other acts and things which independent States may of right do.*"

In the adoption of the Federal Constitution the States did not extinguish, or intend to extinguish, any of their pre-existing international powers. Such of their powers as were deemed necessary they delegated to the General Govern-

ment; the others remained with them, except such as were prohibited to them by the limitations of the Constitution.

The right to acquire and govern territory has always been an incident to the war and treaty making powers of government. Those powers were perfect and complete in the States, and the States delegated them, without reserve or qualification, to the Federal Government. Those powers now exist and inhere to the Federal Government, and may be exercised by that Government as fully and completely as by any other independent State.

Story on Constitution, sec. 1287.

American In. Co. *vs.* Cantor, 1st Peters, 511.

Whatever the States, acting in their separate capacities or jointly under the old Articles of Confederation, might have done in the exercise of those great powers, they by express grants authorized the General Government to do. It is a singular conclusion that in the hands of the General Government, which combines all the war and treaty making powers of all the States, those powers are less comprehensive and less efficient than they were in the hands of each of the States.

Any other independent nation in the prosecution of a war against Spain might have destroyed the Spanish fleets and armies and treated for the cession of the Philippines and Porto Rico with the absolute right to say that the inhabitants of those islands should not acquire or enjoy the right to be incorporated into its body politic or to be made citizens with privileges and immunities equal to those enjoyed by the inhabitants of the conquering State.

While the genius of our institutions and the theory of our

Government combine to prevent the abuse of this power and to direct its exercise as far as may be on lines consistent with the spirit of free institutions, they do not contravene its existence, and there is no evidence to be found in the text of the Constitution or in the history of its formation to show that any international power asserted by the framers of the Declaration of Independence and involved in the acknowledgment of our independence by Great Britain has at any time been surrendered, abandoned, or repudiated.

Decisions by this court touching the rights of the inhabitants of the American territories acquired through the treaties with France, Spain, and Mexico are relied on to establish the doctrine that the Constitution *ex proprio vigore* follows our national flag and extends to every country that comes under our permanent dominion. That there are expressions to be found in some of the opinions of this court tending to support that claim, we are free to admit, and that such expressions by the highest judicial tribunal established by the Constitution are entitled to respectful consideration we do not deny; but the question for present consideration, as it arises under the Treaty of Paris, has never been before this court, and in the nature of things no question strictly analogous could ever have been presented to, considered, or decided by this tribunal.

The Treaty of Paris provides that "the civil rights and the political status of the native inhabitants of territory ceded to the United States shall be determined by the Congress." In no case has this court ever defined, or attempted to define, the civil rights of a person coming under the dominion of the United States in virtue of a treaty containing that stipu-

lation, or its equivalent. The question is *sui generis* and without a controlling precedent.

All the judicial opinions relied on to prove that the Constitution is necessarily the supreme law not only within the limits of the States of the Union, but wherever our authority may extend, were rendered in cases arising in the District of Columbia, or in one of the American territories acquired from France, Spain, or Mexico under treaties fixing and defining the personal rights of the inhabitants.

Of the District of Columbia it is enough to say that it was carved out of the States of Maryland and Virginia after the Constitution had been adopted and after it had been made the supreme law of the land in every portion of each of those States. The creation of the Federal District was not intended to withdraw, and there was no power to withdraw, from the people of that territory the constitutional guaranties, or to deprive them of the constitutional protection they were enjoying as citizens of Maryland and Virginia at the time the District was established.

By the French treaty for the cession of Louisiana it was stipulated that the inhabitants of—

"the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States."

The Spanish treaty ceding Florida contained, in substance, a like stipulation.

The treaty with Mexico, under which New Mexico and Upper California were ceded to the United States, stipulated

that the inhabitants who might remain in those Territories and elect not to continue their character as citizens of Mexico should be incorporated into the Union of the United States and admitted at the proper time, to be judged of by Congress, to the enjoyment of all the rights of citizens of the United States according to the principles of the Federal Constitution.

Following each of these cessions there was appropriate legislation to carry out the stipulations concerning the personal status of the inhabitants. As fast as the population warranted it, territorial governments were established. In virtue of these treaties and of the subsequent legislation, the inhabitants of Louisiana, Florida, New Mexico, and Upper California were clothed with the rights, immunities, and privileges of other citizens of the United States.

Thus all the powers of the Federal Government were called into action for the purpose of extending the provisions of the Constitution to the American countries brought under the dominion of the United States and to secure to their inhabitants the personal and civil rights enjoyed by the citizens of the United States under constitutional guaranties. The solemn action of the treaty-making powers was supplemented and re-enforced by the deliberate action of the legislative and executive departments, and nothing was left undone to extend the Constitution to the new territories, and to incorporate their people into American citizenship.

In Callan's case (127 U. S.), which arose in the District of Columbia, and in which the accused, by virtue of an act of Congress, was denied the right of trial by jury in a criminal prosecution, this court said, as it was bound to say, that—

"There is nothing in the history of the Constitution or of the original amendments to justify the assertion that the people of this District may be lawfully deprived of the benefit of any of the constitutional guaranties of life, liberty, and property, especially of the privilege of trial by jury in criminal cases."

In relation to the territories acquired from France, Spain and Mexico, it might well be said that the authority of the Government of the United States is subject to such restrictions as are expressed in the Constitution or necessarily implied in its terms. Independent of constitutional limitations or of treaty stipulations, Congress, in dealing with the inhabitants of territories acquired either by treaty or conquest, is bound, as far as conditions may reasonably permit, to observe those principles of free institutions which restrain all the agencies of government, State or national.

Those who represent what they term the anti-imperial sentiment of the country propose to look beyond and behind the stipulations contained in the treaties with France, Spain, Mexico, and Russia, and, doing so, to commit this court to a rule of decision that will preclude the judiciary department of the Government from recognizing the power of Congress to exercise sound legislative discretion in carrying out so much of the Treaty of Paris as provides that—

"The civil and political status of the native inhabitants of the territories ceded to the United States shall be determined by the Congress."

They attach no importance to the covenants contained in earlier treaties, and claim that without them the Constitution would have extended the supremacy of its provisions

over the ceded territories and converted their inhabitants into citizens of the United States. This innate power of transmigration was not supposed to inhere in the Constitution by Monroe and Livingston when they negotiated the treaty for the purchase of Louisiana, or by John Quincy Adams, William H. Seward, and the other distinguished constitutional lawyers immediately connected with the treaties through which we obtained the cessions of Florida, New Mexico, Upper California, and Alaska.

From 1803, the date of our first acquisition of territory under the Constitution, down to 1867, when Alaska was purchased, each treaty affords persuasive evidence that special covenants were deemed necessary to secure the benefits and advantages of cititenship to the inhabitants whose allegiance was being transferred to the purchasing government.

It is said that in the Dred Scott case this court expressed the opinion that this Government has no right to hold colonies and no right to hold any people as subjects and no right to acquire territory except with the ultimate purpose of its being admitted into the Union as a State, and that in this conclusion all the judges of that court concurred.

When it is remembered that at the date of that decision no attempt had ever been made to hold a colony or to treat any people as subjects, and that no territory had been acquired that had not been or was not being held with the view of its ultimate admission into the Union as a State or States, we are at a loss to understand how all or any of these important and fundamental questions found a judicial lodgment in a case in which, as shown by the principal opinion, the controlling inquiry was whether Dred Scott, a man of

color, who, according to his own contention, was an ex-slave, was a citizen of the United States and entitled as such to maintain a suit in the Federal courts.

The court did in that case say, and as an historical fact it is true, that the then Territories were, and always had been, held with the object of their ultimate admission into the Union, and did declare that—

"Upon the acquisition of territory by the United States, whether by cession from one of the States or by treaty with a foreign country, or by discovery and settlement, the same title and dominion passed to the United States for the benefit of the whole people and in trust for the several States to be ultimately created out of the territory."

Do the United States, however independent of treaty stipulations, hold Territories in trust for future States?

Mr. Calhoun, speaking (in the Senate) of the legal status of the Territories, said:

"They belong to us; they are ours—that is to say, they are the property of the States of the Union—and we, as the representatives of those States, have the right to exercise all that authority and jurisdiction which ownership carries with it."

From the beginning of our Government we have been dealing with dependent Commonwealths located in territory subject to the jurisdiction of the United States and within the boundaries of the Union. To the inhabitants of those Commonwealths the Constitution has been extended from time to time as the wisdom of Congress has decided, but has never been held to extend of its own force.

The individual members of Indian tribes are not citizens

and have never been deemed citizens of the United States. Such tribes "always have been regarded as having a semi-independent position when they preserved their tribal relations, not as States, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or the State within whose limits they reside."

U. S. *vs.* Kagowa, 118 U. S., 381.
Worcester *vs.* Georgia, 6 Peters, 515.

A member of an organized Indian tribe, born as such, is not born in the United States in the sense of section 1, 14th article of amendment, which provides that:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State in which they are born."

Elk *vs.* Wilkins, 112 U. S., 94.

If the Constitution extended of its own force to the territory occupied by the Indian tribes, all of which is within our limits and subject to the jurisdiction of the United States, it could not be said that Indians are not born in the United States within the meaning of the constitutional amendment.

For almost a hundred years Congress has recognized and acted on the assumed fact that the dominion of the United States extends not only over the States and Territories and the District of Columbia, but also over *dependencies* of the

United States and over countries *subject to the jurisdiction* of the United States.

U. S. Statutes at Large, pp. 274, 288.

Rev. Stats. (1878), secs. 905, 906.

The question before the court in Loughborough *vs.* Blake was, whether the District of Columbia was within the United States in the meaning of the constitutional provision that "all duties, imports and excises shall be uniform throughout the United States." To have decided that the Federal District, made up as it was of territory taken from two of the original States of the Union, and constituting the seat of government, was not, for all purposes, within the United States would have been an extraordinary decision.

If the contest had involved the same question as to the then Territories, a like decision would, no doubt, have been rendered, and the discussion, as to Federal taxation in the Territories, would have been relevant and legitimate. In support of the conclusion reached, the Chief Justice might have said, as in effect was said in Canter's case, the French and Spanish treaties admit the inhabitants of the territories ceded by France and Spain to the enjoyment of the privileges, rights, and immunities of citizens of the United States, and that it was therefore unnecessary to express an opinion as to the supposed self-extending attributes of the Constitution.

Treaties may be disregarded by Congress. Acts extending the operation of the Constitution to new territory, it is insisted, may be repealed. So far as a treaty remains executory on both sides, it may be conceded that Congress can prevent its further execution, but it does not follow that Con-

gress can override the obligations of, and disregard the conditions created by, an executed treaty, nor does it follow that Congress can impair the efficiency of a personal right created and established by the act it assumes to repeal.

Whatever may be the general rule as to the effect of congressional action disregarding the stipulations of a treaty or as to the effect of the repeal of an ordinary statute, citizenship of the United States once acquired, whether by naturalization, or treaty stipulation, or by act of Congress, cannot be taken away, nor its benefits, advantages, or immunities neutralized or impaired, except as a punishment for crime, and then only after a constitutional trial and conviction.

To deprive a citizen of the United States of a civil right that inheres in American citizenship is to inflict on him a most serious punishment. To attempt by legislative action to strip a class of citizens of the right of trial by jury or to take from them constitutional protection against being twice put in jeopardy for the same offense, or against being deprived of life, liberty, or property without due process of law, would be to attempt to subject them to the operation of a bill of attainder, which the Constitution expressly forbids.

The high prerogative of citizenship of the United States may be surrendered by voluntary expatriation, or in a proper case may be nullified by the judgment of a court of competent jurisdiction as a punishment for crime, but it is above and beyond the reach of any self-enforcing statute, State or Federal.

As has been already said, when the court comes to pass on the power of Congress to determine the civil and political status of the inhabitants brought under the au-

thority of the United States by the Treaty of Paris, it is for the first time brought face to face with the question whether the United States, in dealing with territory acquired by conquest or by treaty, may as a free and independent sovereignty exercise the "full power to levy war, conclude peace, contract alliances, establish commerce, *and do all other acts and things* which independent States may of right do." This court may be embarrassed, but it is not compromised, by any of the expressions used in former cases and now relied on as committing it to the views of those who contend that the Philippines and Porto Rico constitute integral parts of the United States, and that their inhabitants are entitled to demand all the constitutional protection to secured to American citizens.

The difference between the Treaty of Paris and all other treaties for the acquisition of territory cannot be overlooked, and he who seeks to maintain its identity by the doctrine of *stare decisis* will be compelled to take the burden of establishing analogies that do not exist.

Taking the sixth section of the Spanish treaty of 1819, quoted by Chief Justice Marshall in Canter's case, which reads that—

"The inhabitants of Territories * * * shall be incorporated into the Union of the United States as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights, and immunities of citizens of the United States"—

it will be necessary to put in juxtaposition with it that clause of the Treaty of Paris which reads—

"The civil rights and the political status of the native inhabitants of the territory ceded to the United States shall be determined by Congress"—

and then to establish that the two stipulations are substa
tially the same, and that in spite of their difference
phraseology, yet for some occult constitutional reason th
meanings are identical and the ends they accomplish in
their essential elements the same.

The Treaty of Paris does not provide that the inhabita
of the territories ceded by Spain shall at any time or in a
contingency be made citizens of the United States, or th
their civil rights are to be measured by the Federal C
stitution. Those rights are committed to the determinati
of Congress. The Asiatic countries ceded by Spain cann
from the nature of things, be incorporated into our Unio
Their people cannot be admitted to the rights of citizensh

It may be said of the fugitive expressions of the Supre
Court concerning the supposed inherent constitutional rig
of the inhabitants of the territories acquired under the tr
ties with France, Spain, and Mexico, all of which have be
carefully collated and strenuously pressed, that those
pressions, even if legitimate and proper, were not necessa
to and might well have been omitted from the opinions
which they are to be found. They were uttered when t
great importance of the question as to the capacity of t
Constitution to extend its operation *proprio vigore* as it n
presents itself could not have been foreseen. and when t
subject did not receive the deliberate consideration that
this time would be given it by the great men who we
members of the court when those expressions were used.

The opinion in Cross *vs.* Harrison does not conflict wi
this conclusion. The question there was, whether dut
paid on goods imported into California between the date
the cession by Mexico, and the time when the collec

appointed under the act of Congress attaching California to a collection district took charge of his office, could be recovered back from the officers by whom they were collected. During this period the military authorities, with the approval and under the authority of the President as Commander-in-chief, compelled the payment of import duties.

It was immaterial to the discussion of the question at issue whether the Constitution did or not extend to California without congressional action. It may be that the treaty by its own terms incorporated that country into the United States, and extended the Constitution and laws of the United States to its people and its ports. The court did not seem to be entirely satisfied with or confident of the sufficiency of the reasons relied on to sustain its learned and, with due respect, its unnecessary preliminary argument.

16 How., 201.

The decision was adverse to the complaining parties because they voluntarily brought their goods into California knowing the state of affairs existing there. They were not coerced to land their goods, and the money collected from them was in good faith paid over by the collecting officer to the United States Treasury officers or otherwise faithfully accounted for, and all this was subsequently ratified and approved by Congress. The court concluded by saying:

"From these circumstances the law will not imply an "*assumpsit* upon the part of the defendant to repay the "moneys received from them (the plaintiffs) for the United "States."

Porto Rican ports continue at all events to be foreign ports within the meaning of those words as used in the statutes of the State of New York regulating pilotage.

Should it be decided that Porto Rican ports are not foreign ports in the ordinary sense of the word, yet it would be a violent construction to interpret the language of the statute of the State of New York, passed in 1884, so as to exempt from pilotage vessels from a land then foreign, but since brought under the dominion of the United States. It is a fundamental rule of construction that laws are to be construed as of the time of their enactment.

Am. & Eng. Encycl. of Law., vol. 23, p. 327.
Mobile *vs.* Enslava, 16 Pet., 234.
Griswold *vs.* Atlantic Dock Co., 21 Barb., 228.

And it would not be reasonable to assume that the legislature of the State proposed to exempt from pilotage vessels belonging to after-acquired and far distant territory of the United States, even supposing human foresight could have foreseen the subjection of such territory. It is doubtless within the power of Congress to exempt from pilotage vessels bound to or from England or Australia or the Philippine islands. Likewise, the State of New York could exempt such vessels from pilotage or could entirely abrogate compulsory pilotage. This, however, is not to be implied from general language in an act of Congress relating to a subject of an entirely different nature which cannot reasonably be construed to affect the statutes of the State of New York regulating pilotage.

The cases upon which respondents rely for a definition of the word foreign arose under the embargo acts, highly penal statutes, and the court held that the word *as there used* should be restricted to its narrowest meaning. They by no means decided, however, that the term was not generally and properly employed in a broader sense.

The case of The United States against Patten (reported in 1 Holmes, 421) supports the contention above set forth. That was an action brought to recover duties on articles taken from a bonded warehouse and used in repairing the vessel *Matterhorn* while at the city of Boston. The vessel had just returned from Calcutta, and after undergoing repairs at Boston sailed in ballast via New York to San Francisco. Loading with grain, she sailed thence to Havre. Exemption from payment of duties on the articles taken from the warehouse was claimed under section 10 of the act of Congress of June 1, 1872 (17th Statutes, 238), now section 2514 of the Revised Statutes, which provides "that from and after the passage of "this act all lumber * * * which may be necessary for "the construction and equipment of vessels built in the "United States for the purpose of being employed in the "foreign trade, *including the trade between the Atlantic and "Pacific ports of the United States*, and finished after the "passage of this act, may be imported in bond * * * "and no duties shall be paid thereon, provided the vessels "receiving the benefit of this section shall not be allowed to "engage in the coastwise trade of the United States more "than two months in any one year * * * and pro-"vided further that all articles of foreign production needed "for the repair of American vessels engaged exclusively in "foreign trade may be withdrawn from bonded warehouses

"free of duty under such regulations as the Secretary of the "Treasury may prescribe."

The court held that for all the purposes of this act trade between the Atlantic and Pacific ports of the United States was foreign trade.

The court will observe that the exemption was not in favor of vessels employed in the "foreign trade" *and in* "trade between the Atlantic and Pacific ports of the United States," as would have been the case if Congress had intended to treat the two trades as distinct and separate in their controlling characteristics. What Congress meant to say, and did say, was that the term "foreign trade," as used in the statutes, included of its own force trade between the Atlantic and Pacific ports of the United States. When the act came to be remodeled by the adoption of the Revised Statutes the words "including trade between the Atlantic and Pacific ports of the United States" were omitted, as shown by section 2514. This omission was not regarded as changing the effect of the statutes by the Bureau of Navigation. The Treasury decision 2771, referred to in the letter of the Commissioner of Navigation, hereunto annexed, was made on April 24, 1876, more than two years after the adoption of the Revised Statutes, and yet the rule laid down in United States *vs.* Patten was in express terms continued in force as to vessels employed in trade between the Atlantic and Pacific ports of the United States. It is made clear by these rulings that the term "foreign" does not necessarily relate alone to trade between American ports and the ports of foreign countries, but may and sometimes does relate to and embrace interstate trade when the conditions naturally lead to such an application of the by

no means definite word "foreign" when used as a descriptive adjective. The remoteness of the Porto Rican ports, the fact that vessels engaged in trade between the United States and Porto Rico traverse waters not contiguous to the United States, and the further fact that the act of April 12, 1900, treats goods brought from Porto Rico into the United States as foreign goods and imposes import duties on them as such, combine to stamp our trade with Porto Rico as foreign trade and bring the vessels engaged in it within the scope and meaning of the New York statute providing that "all masters of vessels from a foreign port shall "be subject to pilotage charges."

In Fleming *vs.* Page (9 Howard 603), this court, reviewing the practice of the Treasury Department in regard to the collection of the custom duties on goods shipped from newly acquired territories, in the absence of congressional regulation, said:

"The Department, in no instance that we are aware of, since the establishment of the Government, has ever recognized a place in a newly acquired country as a domestic port from which the coasting trade might be carried on unless it had previously been made so by act of Congress."

Also:

"That under our revenue laws every port is regarded as a *foreign* one, unless the custom-house from which the vessel clears is within a collection district established by act of Congress, and the officers granting the clearance exercise their functions under the authority and control of the laws of the United States,"

And that this principle had the sanction of this court and of all the circuit courts in which the question had arisen.

The custom-house from which the "Ponce" cleared is not in a collection district established by Congress. San Juan has never been made a domestic port of the United States, and consequently under our revenue system it is to be regarded as a *foreign* port, and must so continue until Congress shall see proper to include it within one of the collection districts of the United States.

Being thus *a foreign port*, a vessel hailing from San Juan comes clearly within one of the classes described by the New York statute, which provides that:

"All masters of foreign vessels and vessels from a foreign port, and all vessels sailing under register bound to or from the port of New York by the way of Sandy Hook, shall take a licensed pilot, or in case of refusal to take such pilot, shall himself, the owners or consignees, pay the said pilotages as if one had been employed and such pilotage shall be paid to the pilot first speaking or offering his services as pilot to said vessel."

Vessels trading between Porto Rico and New York are not engaged in the coasting trade within the meaning of those words as used in the statutes of the State of New York regulating pilotage.

Prior to the act of Congress of April 12, 1900, it was not contended that vessels plying between New York and Porto Rican ports were engaged in the "coasting trade," but it is claimed that by virtue of section nine of the act in question such trade became coasting trade. What is the meaning of the phrase "coasting trade"? The laws of the United States recognize vessels engaged in "foreign commerce," vessels engaged in the "coasting trade," and vessels engaged in the

"fisheries." Each of these phrases has a well-defined meaning, and, if Porto Rico is still a foreign land, vessels engaged in trade between the United States and Porto Rico are engaged in foreign trade, and the mere fact that Congress speaks of the trade between such ports as "coasting trade" does not make such trade coasting trade.

The term "coasting trade" as used in the navigation laws of the United States and the pilotage laws of the State of New York means *domestic trade carried on by vessels sailing along the coast of the United States.* In order that trade may be coasting, trade two elements are necessary—the trade must be between ports of the same country and it must be carried on along the coast thereof.

The definition of the term given in the Century Dictionary is as follows:

"Coasting trade. Trade carried on between the different ports of the same country or under the same jurisdiction by vessels sailing along the coast, as distinguished from foreign and colonial trade."

The Standard Dictionary defines the term coastwise as follows:

'By way of or along the coast: as the coastwise trade."

In the case of *Steamboat Co. vs. Livingston* (3 Cow., N. Y., p. 747), the term is defined as follows:

"Commercial intercourse carried on between different districts in different States, between different districts in the same State and between different places in the same district on the seacoast or on a navigable river."

It cannot be reasonably held that trade between Porto Rico and the United States is of such a character, as it is neither domestic nor coastwise.

The term is older than the nation, and an examination of the English laws and reports verifies the above interpretation thereof.

The merchants' shipping act of Great Britain of 1854, sec. 379, exempts from pilotage duty:

(1.) Ships employed in the coasting trade of the United Kingdom.

(4.) Ships from Guernsey, Jersey, Alderney, Sark, and Man.

Vessels trading between Great Britain and the above-named islands, comparatively adjacent to the British coast, are not regarded as employed in the coasting trade.

In the case of Davidson *vs.* Mekibben (reported in 3 Broderip & Bingham, page 112) the court says:

"Trade from Ireland to Great Britain is not in the ordinary sense of the word coasting trade. It seems clear from the language of the acts that by 'coasters' are meant vessels trading from and to another port or place or ports or places in Great Britain or from one port in Great Britain to another port therein, or one port in Ireland to another port in Ireland."

The reasoning of the above cases applies with much force to the cases at bar.

The "Ponce" was not a coastwise steam vessel within the meaning of those words as used in section 4444 of the United States Revised Statutes.

At the time of the enactment of the Revised Statutes the United States was a continental power with no colonies, island adjuncts, or far-distant possessions. Language is to be construed in its ordinary signification, and the evident and manifest meaning of the words "coastwise steam vessels" is vessels sailing along the coast of the United States.

In the case of Murray *vs.* Clark, 4 Daly, 468, a coastwise vessel is defined to be "one sailing by the way of or along the coast," and a vessel sailing on the high seas a thousand miles from the North American continent cannot be regarded as sailing along the coast or defined a coastwise vessel without a clear abuse of language.

The congressional bill of April 12, 1900, entitled "An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," does not make trade between Porto Rico and New York coasting trade, nor does it affect the subject of port pilotage.

The object of the above-entitled bill was to regulate Porto Rican affairs, and to confer certain benefits upon the Porto Rican people, and the first section of the act limits the operation of the law to the island of Porto Rico and to the islands adjacent thereto. Nothing in any part of the statute can raise the slightest presumption that Congress had any intention of endowing citizens of the United States with any

additional privileges, either under the statutes of the Federal Government or of the various States. The first sentence of section 9 of the act, under which exemption is claimed, is expressly limited to vessels owned by the inhabitants of Porto Rico, and respondent's claim to exemption from pilotage arises from and is confined to the following provision, which, however, must be read in connection with the entire act in order that its true meaning may be determined:

"The coasting trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States."

The purpose of the bill being to provide a revenue and a government for and to confer certain benefits upon the Porto Rican people, it must be shown that as a necessary result of the act the exemption claimed in respondent's answers for the American owners of American vessels arises, or their point is not well taken. Section 9 of the act, it should be observed, is a *trade* regulation.

In the course of his argument on behalf of the respondent in the case of Gibbons *vs.* Ogden (reported in 9 Wheaton, at page 79) Mr. Emmet remarked:

"The power given to Congress to regulate commerce with foreign nations and between the several States relates to commerce in the proper acceptation of the term, the exchange of one thing for another, the interchange of commodities, trade or traffic."

Commenting on the above language, Chief Justice Marshall, in his opinion in the foregoing case, says, at page 190:

"The subject to be regulated is commerce, and our Constitution being, as was aptly said at the bar, one of enumeration and not of definition, to ascertain the extent of the power it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying or selling or to interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many subjects, to one of its significations. *Commerce undoubtedly is traffic, but it is something more; it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches and is regulated by prescribed rules for carrying on that intercourse.*"

Consequently, if Congress had intended to confer such a privilege as respondent contends, it would have used words including such privilege. It is, however, *trade* which is to be regulated; not navigation and not commerce, which includes both trade and navigation.

In the first clause of section 9, Congress provides for the nationalization of Porto Rican vessels and for their admission to the benefits of the coasting trade. This privilege is confined expressly to Porto Rican vessels, and it was intended to enact merely that vessels built in Porto Rico should have the protection of the American flag; that vessels owned by Porto Ricans might be officered by Porto Rican citizens; that Porto Rican vessels should be exempt from tonnage charges and should be entitled to certain other privileges of a like nature.

The last clause of section 9 provides that the "coasting trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the

United States." The provisions of law applicable to trade between the great districts of the United States have no reference to or bearing upon the subject of pilotage. The three great districts were established for the purpose of facilitating the collection of revenue, and there are no statutory regulations of trade between them. This last clause of section 9 has no material bearing on the first clause thereof, but is an independent provision, inserted for the purpose of regulating traffic in alcoholic and certain other commodities, and if the word "coasting" had been omitted before the word "trade," the question at issue would not have been raised, although the meaning of the phrase would have been unchanged.

It cannot be presumed that Congress intended to change the law other than by express terms or as it would arise by unmistakable implication, as it is not to be supposed that it would overturn an established principle "without expressing such intention with irresistible clearness" (Am. & Eng. Encycl. of Law, vol. 23, p. 35, and cases there cited). While the language used is "coasting trade," the bill does not *enact* that trade between the two countries *shall be* coasting trade; at the most it assumes that it *is* coasting trade. It does not purport to *change* the *nature* of the trade, but to *regulate* it in certain respects. If the trade was not coasting trade *before* the enactment of the law referred to, it is not *now* coasting trade in virtue of the law, and the exemption claimed does not apply. Consequently if trade between Porto Rico and the United States is now "coasting trade," it is so by virtue of the treaty of peace between the United States and Spain, or by virtue of the sovereignty over the island exercised by the United States, and it would follow that trade between the United States and the Philippine islands is also coasting trade.

Whatever regulations Congress has applied to trade with Porto Rico, it manifestly regards that trade as "foreign" to the continental American ports.

By the act of April, 1900, Congress did not in express language or by reasonable intendment declare that trade between Porto Rico and the United States shall be coasting trade. The inappropriateness of the adjective "coasting" as used in connection with the word "trade" is made manifest by the language that immediately follows—*i. e.*, "between *Porto Rico* and the *United States*."

The coasting trade of the United States is and has always been trade or commerce along the coast between ports situate within the territory of the United States, as distinguished from commerce with foreign ports. It has always been between the ports of the United States, and never between the ports of another country and those of the United States.

San Juan is subject to the dominion and control of the United States, but Congress does not understand it to be, or intend it to be, a domestic port of the United States; otherwise it would not describe the trade with that port as "trade *between* Porto Rico and the United States."

If counsel for defendants can logically insist that the use of the adjective "coasting," as descriptive of the Porto Rican trade, raises the presumption that Congress intended to convert that trade into coasting trade, then the use in the same connection of the phrase "between Porto Rico and the United States" contravenes and destroys that presumption.

By the very terms of the act of Congress, Porto Rico and the ports of Porto Rico are foreign to the port of New York, just as they were foreign to that port while Porto Rico was held by the United States as a conquered country.

ALASKA.

It was insisted in the district court that the language of section 9 of the Porto Rico act is substantially the same with the statute defining trade between Alaska and the other ports of the United States, and therefore that it was intended by Congress that the Porto Rico statute should be applied in the same way. This is a mistake of fact as well as of intention.

Sections 4358 and 1954 Revised Statutes were taken from the act of July 21, 1868, Statutes at Large, vol. 15, page 240. By section 1 of that act it was provided "that the laws of the United States relating to customs, commerce and navigation be and the same are hereby extended to and over the mainland, islands and waters of the territory ceded to the United States by the Emperor of Russia * * * the thirtieth day of March, anno Domini 1867, so far as the same may be applicable."

Section 2 constituted the ceded territory a customs district, to be called the district of Alaska.

Section 3 provided for the nationalization of vessels owned by residents of that Territory, and section 5 declared "that the coasting trade between the said Territory and any other portion of the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great districts."

The act of April 12, 1900, does not extend the laws of the United States relating to customs or commerce or navigation to Porto Rico. It does not constitute Porto Rico a customs collection district, and does not speak of the trade between

Porto Rico *and any other portion* of the United States, but describes it as "the coasting trade between Porto Rico and the United States." The act treats Porto Rico as one separate and distinct entity, and the United States as another, while Alaska was treated as a portion of the United States.

Instead of extending the customs laws of the United States to Porto Rico, those laws were expressly excluded from that country, and Porto Rican goods, imported into the United States, are required to pay duties, just as strictly foreign goods are required to pay, differing only in the sums exacted.

"All duties, imposts and excises shall be uniform throughout the United States" (section 8, article 1, Federal Constitution).

It is evident that Congress did not intend by the act of April 12, 1900, to treat Porto Rico as a part of the United States. The imposition of custom duties on Porto Rican goods is conclusive of that fact. Whatever may be the extent of congressional power over Porto Rico, an act of Congress that rests on the assumption that that country is foreign to the United States cannot be relied on as converting the trade of that country from foreign into domestic trade or to change the ports of that country from foreign into domestic ports of the United States.

So far as the act of April 12, 1900, is concerned, it treats and was intended to treat Porto Rico and its ports as foreign to the United States, and its trade as foreign and not domestic trade of the United States. The act, in terms, treats such traffic as trade between citizens of the United States, on

the one hand, and citizens of Porto Rico, on the other. It declares that one class of citizens shall constitute a body politic to be known as the "People of Porto Rico," while the other class is conceded on all sides to constitute a body politic known as the United States of America.

In its assertion of plenary power over Porto Rico, Congress resorted to every means possible to preserve the separate character of that country and its people, and to negative the idea that that island was to be deemed a *portion* of the United States, or its inhabitants citizens of the United States.

The natural and reasonable presumption is that Congress had no intention of requiring or authorizing ships plying between Porto Rico and the United States to exchange their registers for coasting licenses, and no thought of exempting them from the duty of submitting to the pilotage laws of the several States into whose ports they may enter or from whose ports they may depart.

Nationalization of Porto Rican Vessels.

Section 9 of the act of April 12, 1900, provides for the nationalization of vessels owned by the inhabitants of Porto Rico. This entitles them to take out papers as American vessels, to fly the American flag, and to enjoy the benefits of the trade of the United States, whether it be foreign or coasting, in the same way and to the same extent that American vessels may enjoy such benefits.

A nationalized Porto Rican vessel, commanded by a Porto Rican master and manned by a Porto Rican crew, may engage in the coasting trade of the United States, just as an

American vessel, commanded by a citizen of the United States and manned by an American crew, may engage in that trade. The Porto Rican vessel, as a nationalized vessel, takes no right and enjoys no privilege that an American vessel did not already enjoy. It may ply up and down the American coast and engage in the coasting trade, as though it were originally American, which no foreign-built vessel can do without express congressional authority, but it cannot, by continuing to ply between Porto Rico and the United States, convert trade between those two countries from its foreign character into that of domestic coasting trade. Such vessels are to sail under registers, or to be enrolled and licensed just as American vessels sail, or are enrolled and licensed, and the question whether the act of Congress continues or terminates the foreign character of the ports of Porto Rico remains as open to them as it does to vessels that were originally American.

The ends thus accomplished are sufficiently numerous and important to relieve the court from the necessity of resorting to construction in order to carry out the presumption that Congress meant to accomplish some purpose by the enactment of section 9.

Not a Regulation of Sea-going Steam Vessels.

The provision that trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade "between any two great coasting districts of the United States" does not subject, and was not intended to subject, steam vessels plying between New York and Porto Rico to the provisions of title

52 of the Revised Statutes. By section 4400 the provisions of that title are applied to all steam vessels navigating any waters of the United States which are common highways of commerce, and by section 4401 *coastwise* steam vessels and vessels navigating the Great lakes are also subjected to the provisions of said title 52.

The provisions of that title are not regulations of the coasting trade between any two great coasting districts of the United States, and they are not referred to or applied to trade with Porto Rico by anything contained in the act of 1900.

Title 50 of the Revised Statutes includes regulations of vessels engaged in domestic commerce.

Title 51 includes regulations of fisheries.

Title 52 applies generally to the regulation of steam vessels.

There is nothing in the act of April 12, 1900, that brings the steamer *Ponce* under either one of the provisions of title 52; hence it was under no obligation and had not authority to surrender its register, or to apply for enrollment, or to take out a coasting license, or to employ a pilot licensed under the laws of the United States, and there was no authority conferred on the Commissioner of Navigation to impose any one or more of these obligations on that steamer, nor has he attempted to do so. Being under no legal duty and having no legal authority to employ a pilot licensed by the United States, the steamer *Ponce* was and is bound to pay fees to the pilots of the port of New York who offer their services.

State Regulations on Pilotage.

State regulations in regard to pilotage have always been favored rather than condemned by Congress and by the courts of the United States.

2d Wallace, 450; 12th Howard, 299; 102d U. S., 592.

The enactment of April 12, 1900, failing to mention pilotage or to apply any Federal statute affecting pilotage to the trade between Porto Rico and the United States, it follows that the pilotage laws of New York are applicable to vessels engaged in that trade just as they were applied when Porto Rico was conquered and our dominion established there by superior force.

It is not to be presumed that Congress intended by the act of April 12, 1900, to limit or abridge any of the rights of the New York pilots. There is no expression in the act that reasonably leads to that conclusion. Congress seems to have assumed that trade between the United States and Porto Rico, on which it was imposing duties that can only be imposed on goods foreign to this country, is coasting trade; but *it did not enact* that it should be coasting trade, or use the term "coasting" in the sense in which it is used when applied to the domestic trade of the United States. It does not declare Porto Rico to be an additional coasting district.

Foreign trade may be regulated, as far as this Government is concerned, as trade between the great coasting districts of the United States is regulated, but to so regulate it will not change its character or convert it into domestic trade. Our coasting regulations all recognize the incapacity of Congress to levy import duties on domestic goods, while the act of

1900 distinctly asserts its power to levy such duties on Porto Rican goods.

Trade between Porto Rico and the United States may be regulated in many respects as our own domestic coasting trade is regulated, but Porto Rican ports must continue foreign to the ports of New York as long as import duties are levied on goods brought from Porto Rico. The use of the inappropriate language in question does not change the general meaning of the act, and the use of that language cannot be regarded as evidencing an intention by Congress to modify the New York statutes in relation to pilotage in the harbor of New York.

Regulations of the Bureau of Navigation.

The Bureau of Navigation created by Congress in 1884 is a mere administrative agency, without judicial functions, and the Commissioner of Navigation is strictly a ministerial officer. His decisions of questions relating to the issue of registers, enrollments, and licenses may operate to protect the owners and masters of vessels against the imposition of penalties in cases in which mistakes may be made, but such decisions do not and cannot preclude the courts from administering the law as it is written in private controversies.

The commissioner's letter of May 16, 1900, to the collector at New York, a copy of which is annexed hereto, shows that the licenses were issued to the vessels of the New York and Porto Rico Steamship Company *at the request of the company* and not on account of any decisions that had up to that time been rendered by the commissioner, who was content for those vessels to continue their voyages to Porto Rico and

back to New York under their pre-existing registers. The authority of the collector to make changes in these documents was granted at the *express request* of the company's attorneys. The said letter also shows that the Treasury Department had consistently held that in voyages from the Atlantic ports of the United States to the Pacific ports of the United States the vessels were bound on foreign voyages, "within the purview and for the purpose of section 4337 of the Revised Statutes of the United States," and that for the purpose of said statute such vessels are engaged in foreign trade. This ruling was based on a decision of the circuit court of the United States, which court decided "that vessels trading between the Atlantic and Pacific ports are in the foreign trade," the Treasury Department adding that "such a voyage is chiefly in waters not contiguous to the United States." So it may be said of vessels trading from New York to San Juan. They are never in waters contiguous to the United States from the time they lose sight of land at Sandy Hook until they sight Porto Rico, and we do not concede that the latter country is a part of the United States.

Section 2514 of the Revised Statutes, referred to in said letter of the commissioner, is as follows:

"All articles of foreign production needed for the repair of American vessels engaged exclusively in foreign trade may be withdrawn from bonded warehouses free of duty under such regulations as the Secretary of the Treasury may prescribe."

Under the decisions of the Treasury Department, and in consonance with the reasoning on which such decisions are based, the Porto Rico Steamship Company would be justified

in claiming the benefits of said section 2514 on the ground that its vessels are engaged in foreign trade. It cannot consistently claim, also, exemption from the pilotage statutes of the State of New York on the ground that its vessels are engaged in domestic trade.

In the letter, of May 16 the commissioner misconstrued the act of Congress of April 12, 1900, in assuming that because the statute speaks of the trade between Porto Rico and the United States as "coasting trade," it thereby converted foreign into domestic trade. The commissioner was mistaken, too, in his assumption that because such trade was to be regulated as trade between any two great coasting districts, it was not to be regulated as trade between a coasting district of the Atlantic States and a district on the Pacific coast, but was to be regulated in accordance with the trade between districts on the same coast in which the voyages are wholly in waters contiguous to the United States.

The letter demonstrates that the word "foreign" has not been construed to apply alone to ports exclusively within the jurisdiction of a foreign country, but has been and is being applied to trade between different ports of the United States located on different sides of the continent, for the reason that a voyage between such ports is not chiefly in waters contiguous to the United States; so that, in the sense in which this word "foreign" has been and is being used by the Treasury Department, a dependent colony is a foreign country, and a colonial port is a "foreign port." It is essentially material whether the Porto Rican ports are domestic or colonial. If colonial, and therefore not domestic, they are "foreign" to the ports of the State of New York.

The fact that the words "domestic trade" and "foreign

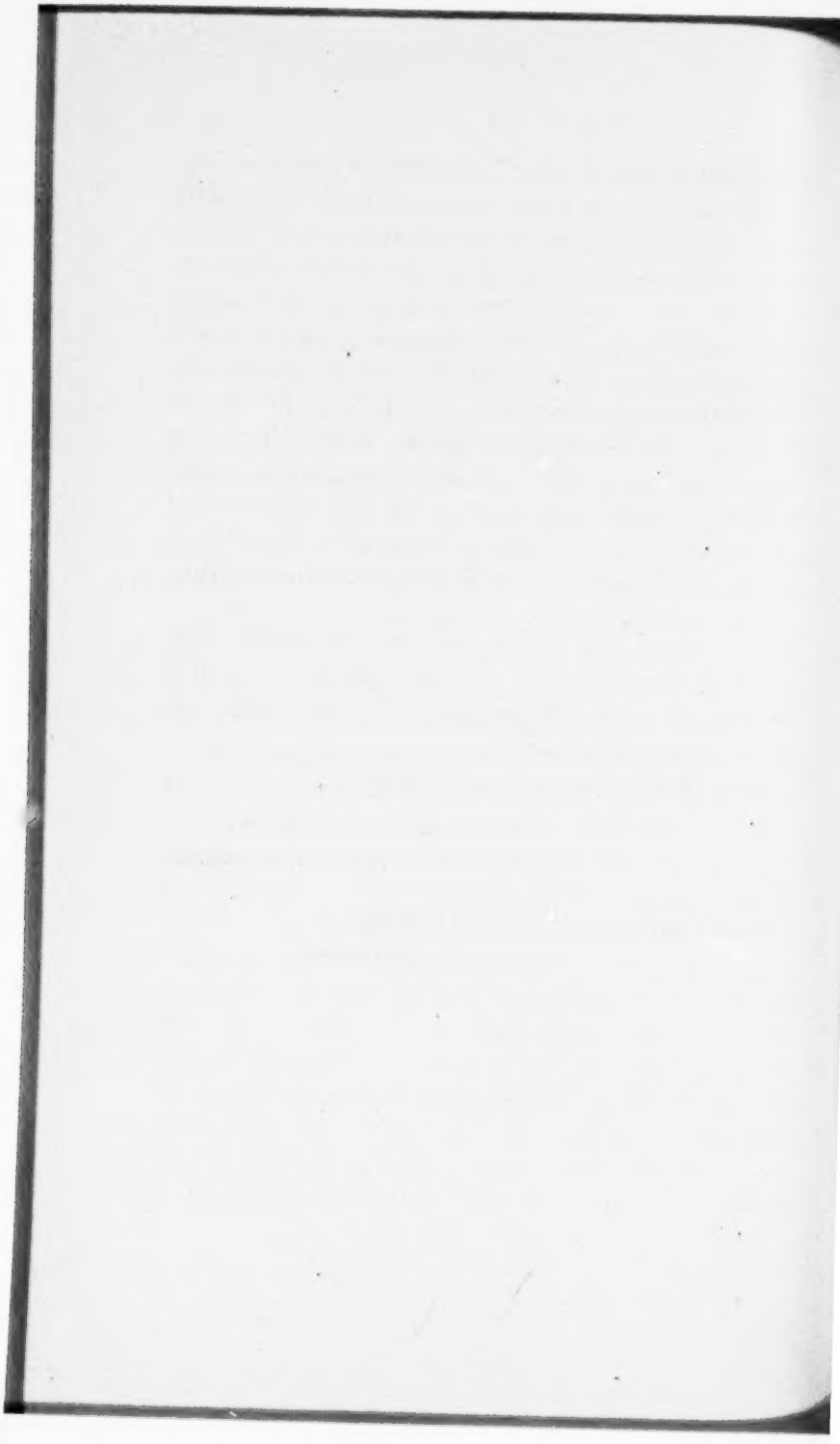
trade" and "domestic ports" and "foreign ports" are not used in our statutes in an arbitrary, fixed, and determinate sense is illustrated by section 19 of an act approved December 21, 1898, entitled "An act to amend the laws relating to American seamen for the protection of such seamen, and to promote commerce." In that section the words "domestic trade" are made to include trade between the ports of the United States, and trade between the ports of the United States and the Dominion of Canada, Newfoundland, the West Indies, and Mexico, and the words "foreign ports" are made to include trade between the ports of the United States and foreign ports, except as just specified, *and* trade between the Atlantic and Pacific ports of the United States.

In conclusion, it is insisted that the first question certified by the circuit court of appeals should be answered in the affirmative, and that the second and third should each be answered in the negative.

All of which is respectfully submitted.

WILLIAM LINDSAY,
Proctor for Appellant.

LINDSAY, KREMER, KALISH & PALMER,
Of Counsel.



APPENDIX.

Copy of Letter from Assistant Secretary of Treasury to Collector of Customs at Sitka.

TREASURY DEPARTMENT, *January* 8, 1884.

SIR: In a communication to the department of the 7th ultimo, you enquire whether a vessel under enrollment and license can trade between the district of Alaska and another great coasting district of the Pacific coast, or whether she should not be under register.

You are informed that a *register* is a document issued *exclusively* to vessels engaged in a *foreign* trade. Alaska is part of the United States, and vessels trading between that territory and any other part of the United States require only an enrollment and license, though vessels under a register may enter the coasting trade and proceed from Alaska to California or Oregon. But vessels thus trading *require* no register, and vessels in the first instance take such a document only when about to enter a foreign voyage.

Your attention is called to decision 5618 of the Synopsis for 1883.

Very respectfully, H. F. FRENCH,
Assistant Secretary.

Collector of customs, Sitka, Alaska.

Copy of Letter from Commissioner of Navigation to Collector of Customs at New York.

TREASURY DEPARTMENT, BUREAU OF NAVIGATION,
WASHINGTON, D. C., *May* 16, 1900.

Collector of customs, New York, N. Y.

SIR: Your letter of the 15th inst., concerning the letter of Messrs. McCammon & Hayden, attorneys for the New York and Porto Rico Steamship Company, in which they request a change in the documents of the vessels of said company from registers to enrollments and licenses, has been received. You state that—

On the 10th instant Mr. H. T. Knowlton, of the steamship company named, made a similar request to this office, and was informed that in view of the Department decisions governing vessels in similar trade, his request could not be granted, unless authorized by the Secretary of the Treasury. The Department decisions herein referred to are Treasury decision 2771 (April 24, 1876), wherein it is stated that the "circuit court of the United States at Portland, Me., decided that * * * vessels trading between an Atlantic and a Pacific port are in the foreign trade." In a letter to this office, dated April 7, 1892, the Commissioner of Navigation advised "that to avoid any question which might arise under section 4337, Revised Statutes, should the vessel visit a foreign port, a register be obtained according to the usual course of procedure." Treasury decision 14670, dated February 15, 1894, holds that "an American vessel proceeding from Atlantic to Pacific ports in the United States" is bound on a foreign voyage; that "such a voyage is chiefly in water

not contiguous to the United States," and it points out the fact that during such voyage vessels may be obliged to touch at intermediate foreign ports.

Treasury decision 2771 refers to Revised Statutes, section 2514, and states that the circuit court of the United States at Portland, Maine, has decided that, for the purposes of the statute, vessels trading between an Atlantic and a Pacific port are in the foreign trade.

Treasury decision 14670 holds that an American vessel proceeding from Atlantic to Pacific ports in the United States "is bound on a foreign voyage within the purview and for the purposes of Revised Statutes, section 4576."

Bureau letter of April 7, 1892, in which you are advised that, in order to avoid any question which might arise under section 4337, should the vessel visit a foreign port, a register be obtained, related to a vessel bound from a port on the Atlantic to a port on the Pacific.

The bureau is of the opinion that none of the decisions cited by you is applicable to American vessels engaged in the coasting trade between New York and Porto Rico, which by the act approved April 12, 1900, is regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States.

You are authorized, upon application, to issue enrollments and licenses to vessels of the United States engaged in trade between your district and Porto Rico, at the same time advising applicants of the provisions of section 4337, Revised Statutes.

Respectfully,

EUGENE T. CHAMBERLAIN,
Commissioner.